

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

BYRON K. RED KETTLE,

Petitioner,

vs.

SCOTT FRAKES,

Respondent.

**8:13CV171**

**MEMORANDUM  
AND ORDER**

Petitioner seeks an order from the court ordering DNA testing of evidence in his case pursuant to [18 U.S.C. § 3600](#). ([Filing No. 130](#).) Section 3600 states, in relevant part:

Upon a written motion by an individual sentenced to imprisonment or death pursuant to a *conviction for a Federal offense* (referred to in this section as the “applicant”), *the court that entered the judgment of conviction* shall order DNA testing of specific evidence if . . .

(emphasis added). Petitioner’s request fails for two reasons: (1) this habeas action is before the court to challenge Petitioner’s Nebraska state court convictions, not his South Dakota federal conviction, and (2) this court did not enter judgment of his federal conviction. The court reminds Petitioner, again, this case is closed.

IT IS THEREFORE ORDERED that: Petitioner’s motion for DNA testing ([Filing No. 130](#)) is denied. His corresponding motion to appoint counsel ([Filing No. 131](#)) is also denied.

Dated this 13th day of April, 2017.

BY THE COURT:

*s/ Richard G. Kopf*  
Senior United States District Judge